

GREATER NEW YORK HOSPITAL ASSOCIATION

PRESIDENT, KENNETH E. RASKE • 555 WEST 57TH STREET, NEW YORK, NY 10019 • T (212) 246-7100 • F (212) 262-6350 • WWW.GNYHA.ORG

April
Twenty-Nine
2021

Via electronic mail
alan.murray@empireblue.com

Alan Murray
Chief Executive Officer
Empire BlueCross Blue Shield
One Liberty Plaza
New York, NY 10006

Re: Site of Care Policy

Dear Mr. Murray:

I am writing on behalf of Greater New York Hospital Association (“GNYHA”). Our organization represents over 160 hospitals and health systems, primarily in New York State. These institutions provide a wide array of services to Empire’s members. I am writing to lodge our objection to the new “Site of Care” policy that Empire unilaterally implemented on April 1, 2021.

In an effort to avoid a protracted dispute between GNYHA and Empire we urge Empire to immediately withdraw this policy. Among other things, this policy (1) interferes with the doctor/patient relationship, (2) has significant quality and safety implications for patients, and (3) severely limits the choice of patients in a manner that is inconsistent with the benefits Empire has represented it will provide to its members. Although Empire defines it as a policy on “medical necessity,” as hospital-based and standalone ambulatory surgery centers are subject to the same licensure standards, it appears that this policy is truly intended to increase Empire’s profits without regard to Empire’s legal obligations.

Empire’s Site of Care policy, which applies to a long list of medically necessary procedures often performed in an outpatient setting, requires these procedures to be prior- authorized by AIM Specialty Health if they are to be performed in a hospital outpatient setting, *even if the hospital outpatient setting is in-network*. No such requirement is imposed for non-hospital outpatient settings. In fact, the policy provides that Empire will **not** approve hospital-based ambulatory surgery if it can be done in a non-hospital setting. Thus, the policy improperly allows AIM Specialty Health to override the determination of the treating physician and patient as to the clinically appropriate site of service only when that site of service is hospital-based.

Empire’s policy is an untenable violation of the doctor/patient relationship and directly interferes with the treating physician’s determination as to the appropriate medically necessary care, including the site of service, for the patient. The new policy thus improperly interrupts medically necessary care and also delays timely access to such care.



GNYHA is a dynamic, constantly evolving center for health care advocacy and expertise, but our core mission—helping hospitals deliver the finest patient care in the most cost-effective way—never changes.

Access to hospital-based outpatient surgery is extremely important because the majority of ambulatory surgery settings in New York are hospital-based. Also, every surgery involves some level of risk, and complications can arise. Patients in need of outpatient surgery should therefore have access to the full range of services that only hospitals can provide when recommended by their physician. When a patient suffers respiratory issues or bleeding complications, for example, time is of the essence. The chances of full recovery are greatly improved when the highly qualified staff, state-of-the-art equipment, and physicians familiar with the patient's medical history are immediately available. When complications arise, the quality of care can diminish if a patient must be transported from a freestanding surgery center to a hospital.

This new policy greatly restricts Empire's members' ability to choose their health care provider and access to hospital-based outpatient surgery recommended by their physicians. This means that when outpatient surgery becomes necessary for Empire members, Empire will not approve it at the in-network hospitals their enrollees know, trust, and choose to receive care at, contrary to Empire's representations to its members. The patient is then left to find another provider, with all the attendant delays, even if Empire agrees the surgery is necessary.

At best, the patient's care will be delayed while the surgeon seeks AIM's authorization and escalates the matter to a peer-to-peer review to make the case that Empire should allow the patient to receive needed care from a person and institution that is in Empire's network. Even if AIM relents and authorizes the procedure to be done at a hospital-based facility, precious time is lost. This is of particular concern at a time when many patients are still catching up on care they had to defer during the height of the pandemic.

Demanding that patients be treated outside of the hospital setting, against the advice of the patient's in-network treating physician, appears to be motivated by a desire to drive up Empire's profits. By implementing this policy, Empire is violating the rights of the patients Empire services, GNYHA's member hospitals and health systems, and GNYHA's own rights by engaging in, among other things, breaches of contract, deceptive trade practices and tortious interference.

We urge you to immediately abandon this wrongheaded and unlawful policy. If you would like to have a further discussion of our concerns, please contact me.

Sincerely,



Kenneth E. Raske
President

cc: The Honorable Letitia James
New York State Attorney General

Linda Lacewell
Superintendent
New York State Department of Financial Services

Howard Zucker, MD
Commissioner
New York State Department of Health